

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

IN RE: ETHICON, INC. PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL No.
2:12-MD-2327

August 23, 2013
Huntington, West Virginia

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE CHERYL A. EIFERT
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (by telephone)

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1 Friday, August 23, 2013, at 3:00 p.m. in conference room

2 THE COURT: Hello, everyone.

3 MR. GAGE: Hi, Judge.

4 THE COURT: Well, I understand we still have a
5 pretty sizeable crowd, which I'm happy to see on a Friday
6 afternoon.

7 Before we get started with your all's agenda, I wonder if
8 I might cover a few little issues that I have on my own
9 agenda. The first has to do with briefing schedules. I just
10 want to make sure that I'm on top of the briefing schedules
11 for the two motions that are outstanding.

12 I currently on my list have two motions in this
13 particular MDL that we are in the process of briefing. The
14 first would be the motion supporting entry of a protective
15 order which has to do with the OUS documents.

16 According to my schedule, the plaintiffs have their
17 response due on August 27th and then Ethicon would have its
18 reply due on September the 3rd.

19 Is that what you have?

20 MS. BAGGETT: I believe that's true, Your Honor,
21 yes.

22 THE COURT: Is this Renee Baggett?

23 MS. BAGGETT: Yes, Your Honor.

24 THE COURT: Okay. I do want to ask you again --
25 Miss Ruffner is present here with us -- if you wouldn't mind

1 identifying yourself when you speak so she can get the
2 transcript down.

3 MS. BAGGETT: Yes.

4 THE COURT: All right. So -- and on the side of the
5 defendants, does that sound like a correct briefing schedule?

6 MR. GAGE: Yes, Your Honor. That's August 27th --
7 This is William Gage speaking.

8 THE COURT: Okay.

9 MR. GAGE: That's August 27th for the plaintiffs'
10 response and the defendant's response due September 3.

11 THE COURT: That's -- yes, that's what I have.

12 MR. GAGE: Okay. And, Your Honor, I'm going to pull
13 the calendar up just to make sure. Okay. Yeah. I was just
14 checking to make sure none of those dates fell on a weekend.
15 They don't.

16 THE COURT: No, I believe September the 3rd may be
17 the Tuesday after Labor Day.

18 MR. GAGE: Right.

19 THE COURT: Okay. The other motion that I show as
20 being outstanding is docket number 730, which is plaintiffs'
21 motion to compel production of the sales rep files. That was
22 filed on August the 15th, and I don't think we discussed the
23 need for an expedited briefing schedule.

24 So what I would have on my calendar right now is that the
25 Ethicon's response would be due on September the 3rd and the

1 plaintiffs' reply would be due on September 13.

2 Is that consistent with your expectations on the
3 briefing?

4 MS. BAGGETT: Renee Baggett, Your Honor. Yes, Your
5 Honor, that's our understanding.

6 MR. GAGE: That's fine with us, Your Honor. William
7 Gage speaking.

8 THE COURT: Those are the only two motions that I
9 show. Are you aware of there being anything else still
10 pending?

11 MR. GAGE: William Gage. No, Your Honor.

12 THE COURT: Thank you.

13 MS. BAGGETT: Renee Baggett. No, Your Honor.

14 THE COURT: I understand now you have reached some
15 agreement regarding discovery of the hernia mesh and you
16 should be submitting a stipulation today on that. Is that
17 correct?

18 MR. GAGE: Your Honor, this is William Gage.
19 Mr. Aylstock and Miss Baggett and several of us on the defense
20 side have been working. We have got a deal. I think
21 Miss Baggett still is just double checking some -- there's
22 some appendices that are going to be attached to the
23 stipulation that we're going to present to Your Honor, and the
24 appendices have lots and lots of things like search terms, and
25 Miss Baggett has made some -- she's got some red-line changes,

1 and she sent them to us and we got -- sent some back to her
2 just to say, "What if we modify some of these a little bit?"
3 They're -- I think it's fair to say it's a very, very, very
4 small detail, but I think we're -- I mean I think we're
5 ready -- we are ready to announce to the Court we have a deal;
6 we've just got to get the appendices put together and attached
7 to the stipulation.

8 THE COURT: When do you expect --

9 MS. BAGGETT: And --

10 THE COURT: I'm sorry. Go ahead, Miss Baggett.

11 MS. BAGGETT: I was just going to say that I agree
12 with what he said, that we have spoken and that that is our
13 understanding as well.

14 THE COURT: When do you think you'll have the
15 finalized stipulation to the Court, then?

16 MR. GAGE: Your Honor, we should have -- well, Your
17 Honor, if I could say this. The red-line changes that
18 Miss Baggett proposed to the search terms, our people just
19 looked at them, and I got an e-mail saying that they looked
20 good, but we were going to propose some counter-proposals. So
21 I'll send those to Renee as soon as we get off the call. My
22 guess would be Monday or Tuesday at the latest.

23 THE COURT: All right. Does that sound accurate to
24 you, Miss Baggett, as far as a time frame?

25 MS. BAGGETT: Yes. Yes, Your Honor.

1 THE COURT: Great. Then the German witness,
2 Dr. Trzewik, was his custodial file produced?

3 MR. GAGE: Yes, Your Honor.

4 THE COURT: And Dr. Klosterhalfen, have we gotten
5 any further on the explants?

6 MR. GAGE: Your Honor, I made a written proposal to
7 Ben Anderson on -- this is William Gage again -- a written
8 proposal to Ben Anderson on Wednesday where we proposed --
9 well, we made a pretty lengthy proposition on how to handle
10 Dr. Klosterhalfen and the explants, and I've not yet heard
11 back from Ben.

12 I know Ben has been -- I think Ben has been traveling,
13 but I have -- we do now have a very specific offer out to
14 plaintiffs on that issue.

15 THE COURT: Does anyone on the plaintiffs' side have
16 any information on this issue?

17 MS. BAGGETT: Yes, Your Honor. I wanted to ask if
18 Tom had joined the call -- I heard a beep come in -- because
19 he's been dealing with this, but we did have some issue with
20 the number of documents that were produced in the Trzewik
21 custodial file and the timeliness of that production.

22 Of course, this is a deposition that's taking place in
23 Germany, and we're going to have to take on the expense and
24 the time to travel there; and if we have not had appropriate
25 time to review those documents in preparation for the

1 deposition, it could cause us substantial difficulty.

2 THE COURT: How many pages were produced?

3 MS. BAGGETT: Mr. Gage can correct me if I'm wrong,
4 but I think it was over 14,000 documents.

5 MR. GAGE: Your Honor, it may be eleven or twelve
6 thousand, but it is a -- you know, it's a lot of documents.

7 THE COURT: When is his deposition scheduled?

8 MS. BAGGETT: I'm trying to confirm that for you,
9 Your Honor. This is Renee Baggett.

10 MR. GAGE: Your Honor, the September 4 is where it's
11 currently scheduled.

12 THE COURT: All right. I guess, then, what we'll do
13 is -- well, let's see. There's only one more conference
14 before his deposition would take place, and that would be just
15 a few days before the deposition.

16 Let me know, then, if you have any issues that come up on
17 that, but I guess you'll need to let me know in the next few
18 business days.

19 MR. CARTMELL: Your Honor, this is Tom Cartmell. I
20 did join after you started, I guess. I apologize for that.

21 I was just going to add that I do think that our lawyers
22 who are preparing for that would like to push that deposition
23 back a few days.

24 My understanding is that the reviewers have started
25 reviewing it. And as far as the page numbers, it's much

1 greater than obviously the 14,000, or around that, documents.
2 And so we don't believe that we're going to be adequately
3 prepared before going over there.

4 Having said that, we don't want to push it back so far
5 that we wouldn't be able to take the deposition until after
6 our expert reports are due, or if we had to, we were hoping
7 that we could get an extension just for a supplement on that
8 if necessary, not an extension on the actual deadline date.

9 MR. GAGE: Your Honor, as we were just about to get
10 on this call, about five minutes before we got on the call, I
11 just got an e-mail, and apparently Dr. Trzewik is willing to
12 move his deposition to September 18-19. And this is just
13 breaking news. Ordinarily I wouldn't want to be providing new
14 news in the presence of the Court like this, but we just got
15 the e-mail.

16 So, Tom, if you could look at that date and let us know.

17 MR. CARTMELL: Sure will. Thanks.

18 THE COURT: Well, that's actually welcome news
19 because maybe that will resolve this issue, then. That would
20 give you an extra couple of weeks to look at the documents,
21 which should be sufficient time, I would guess, although --

22 MR. CARTMELL: I agree.

23 THE COURT: -- quite honestly, I've never had to
24 review 14,000 pages. So I don't know how long it takes.

25 What about Dr. Klosterhalfen? You said, Mr. Gage, that

1 you had sent a proposal on how to handle his explants, and I
2 think where we left off was where are we on the plaintiffs'
3 side with that? Does anyone on the phone know about that?

4 MR. CARTMELL: Your Honor, I don't know if somebody
5 already said it, but Mr. Anderson was dropping off his
6 daughter at college today. She's a freshman starting at
7 college, and so he was unable to attend, and I think he knows
8 more about that than anybody else. I certainly -- I don't
9 know enough about it to comment.

10 THE COURT: All right. That was Mr. Cartmell,
11 correct?

12 MR. CARTMELL: Yes. I'm sorry. Tom Cartmell.

13 MR. GAGE: Your Honor, this is William Gage. I
14 have -- I have not heard back from Ben on these issues
15 regarding Dr. Klosterhalfen. My belief is he's going to want
16 to talk to me and he's going to want to probably propose some
17 different things. So my request would be that Ben and I get
18 together early next week and talk through this.

19 THE COURT: Okay. Why don't we just pass
20 Dr. Klosterhalfen, then, to the next conference, and we can
21 check then and see where we are, because as I recall, you're
22 not going to Germany for a couple of weeks -- well,
23 probably -- what? -- in mid September?

24 So I guess you'd want to know something before then or by
25 then I would think.

1 MR. GAGE: Yes, Your Honor. And there are -- there
2 are additional issues related to Drs. Klosterhalfen and Klinge
3 which we, again, raised in the proposal that we sent to
4 Mr. Anderson. So if Ben and I can't get it worked out next
5 week, it's something that we're going to need Your Honor to
6 break the tie on a week from today.

7 THE COURT: All right. That sounds fine.

8 That is all that I had on my little agenda. So let me
9 ask who would like to go first today.

10 MR. GAGE: Your Honor, I don't necessarily ask that
11 we go first, but I would make one recommendation for us, and I
12 suspect Tom would join me in this.

13 Your Honor, probably the most pressing issue for today,
14 unlike the prior couple of weeks, really concern some
15 depositions, and there are a couple of depositions that we've
16 kind of hit an impasse on. And as much as I hate to take the
17 Court through the back-and-forth in details of dates and such,
18 I think that's -- because these depositions are either going
19 to be taking place very soon or not, we probably need the
20 Court's help on those issues first off.

21 THE COURT: All right. Why doesn't -- why doesn't
22 somebody tell me what depositions we're talking about and what
23 the issues are. I'm --

24 MR. GAGE: Your Honor --

25 MR. CARTMELL: Do you want to go? Do you want to

1 go?

2 MR. GAGE: Well, I will put -- I will put three
3 depositions down that I know we have issues on, and then the
4 plaintiffs may want to add more to that, but at a minimum it
5 would include Dave Robinson and Pete Hinoul -- and that's
6 H-i-n-o-u-l -- and Dan Lamont.

7 And then, Tom, do you want to add to that list?

8 MR. CARTMELL: Yes. I would probably add the
9 continuation of the -- this is Tom Cartmell -- continuation of
10 Dan Smith to that list.

11 THE COURT: Let's start, then, with Mr. Robinson.
12 Tell me who he is and what the problems are with his
13 deposition.

14 MR. GAGE: Your Honor, I'm going to yield the floor
15 to Michael Brown, who is a lawyer here with my firm. Michael
16 has been working a lot with Dr. Robinson, and he kind of knows
17 the situation better than I do.

18 MR. BROWN: This is Michael Brown. Your Honor, we
19 had placed Dr. Robinson up for deposition in three days in
20 the New Jersey litigation and then offered him up as a fact
21 witness in the MDL as he was requested.

22 Now, Dr. Robinson, Your Honor, is a Medical Affairs
23 Director that came in the August time of 2005 and was involved
24 in the launch of one of the products, TVT Secur, and then came
25 out of the role as the primary Medical Affairs Director around

1 the time of 2009. And so he was not involved in the launch of
2 TVT Retropubic, TVT Obturator, TVT Abbrevio, or TVT Exact.

3 And so he was placed for deposition on September 24th and
4 25th. We agreed to two days of deposition, started at 9:00,
5 ended right around 6:53 p.m., went late, Your Honor, and then
6 started the next day at 9:00 and stopped around 4:16. And,
7 Your Honor, it's the defendant's position that as a fact
8 witness, he's been offered up for two full days and that there
9 should not be additional time for his deposition.

10 THE COURT: Did you say his deposition was taken
11 August 24th through the 25th?

12 MR. BROWN: July 24th --

13 THE COURT: Oh, July.

14 MR. BROWN: -- through July 25th. If I said that
15 wrong, then it's July, Your Honor.

16 THE COURT: July 24th through the 25th. And at the
17 time that he was offered as a witness, he was offered only as
18 a fact witness in the MDL, or was he also being offered in the
19 litigation in New Jersey?

20 MR. BROWN: The deposition, Your Honor, was cross-
21 noticed in New Jersey, but New Jersey did not have an
22 opportunity to question the witness, Your Honor.

23 THE COURT: So the two days that -- the two days he
24 testified in July, he testified solely as a fact witness in
25 the MDL.

1 MR. BROWN: That is correct, Your Honor.

2 THE COURT: Now, who wants to take his deposition
3 again?

4 MR. BROWN: Your Honor, the MDL plaintiffs have
5 requested additional time with him.

6 THE COURT: All right. Mr. Cartmell, or someone on
7 the plaintiffs' side, why would you need more than two days to
8 depose him as a fact witness?

9 MR. CARTMELL: Your Honor, this is Tom Cartmell. As
10 Mr. Brown said, Mr. Robinson was deposed in the New Jersey
11 litigation prior to the Gross trial. He was deposed for three
12 full days in that case on one product, which was the Prolift
13 product. He would be considered by the plaintiffs, if you
14 took all of the witnesses involved in the litigation,
15 definitely as one of the top three or four most important
16 witnesses in the case.

17 During the period of time that he was the medical
18 director, which was, I believe, 2005 until 2009, or late in
19 2009 I think it was, that is probably -- well, it definitely
20 is the most critical time in the case. It's also the time
21 period when if you looked at the cases pending in the MDL,
22 that's where a huge percentage of the cases would fall.

23 He was, as medical director, the individual that signed
24 off on the clinical expert reports, the adverse event
25 reporting, all issues of pharmaco vigilance on all of the

1 brochures on the IFUs and basically all of the hazards and
2 harms, risk assessments, all the dFMEAs, all the aFMEAs, all
3 the pFMEAs, which are risk assessment tools, all of the
4 adverse reporting during that time. And he did that for the
5 TVT Secur, the TVT-O, the TVT Classic, the TVT-AA, Laser Cut
6 TVT, TVT-D -- or, excuse me, not TVT-D. TVT Exact and TVT
7 Abbrevio.

8 So he was deposed for three days in New Jersey on the
9 Prolift only. In this litigation, which we're trying to
10 prepare trial packages on behalf of thousands of plaintiffs,
11 you know, nationwide, he is a critical witness on seven or
12 eight products, and therefore what we've tried to do is take
13 his deposition. We did not take -- if a day is seven hours,
14 and I'm not saying -- I think the Federal Rules may say that
15 seven hours as a witness is a full day. I think the
16 deposition time actually with him was just under -- it was
17 like 13 hours and 30 minutes.

18 The second day at 4:00 that defense counsel, Mr. Gage,
19 said that they needed to do a direct examination and we said,
20 you know, pursuant to your earlier ruling, that he could do
21 that based on what we had done so far, he did that. I think
22 it was a little over an hour, and there was a brief redirect
23 on that.

24 We talked to Mr. Gage afterwards, and there was an
25 agreement we thought on behalf of the MDL that there would be

1 an additional day provided for him for the MDL.

2 New Jersey is also wanting time with Dr. Robinson.

3 Obviously Adam Slater, the lawyer there, wants additional time
4 as well.

5 We were then told that he will be offered for a day
6 additionally but that it needs to be split up between us and
7 New Jersey. New Jersey is unwilling to do that, and we are
8 also unwilling to do that because we feel that we definitely
9 need additional time with Dr. Robinson on seven products when
10 he was deposed for three days on one product.

11 There were some issues with responsiveness, and I can
12 give you examples of that if you want, but we would be
13 satisfied for the MDL and say it is complete with one complete
14 seven-hour additional day with Dr. Robinson.

15 We believe that actually we will not likely be able to
16 adequately finish on Abbrevio and Exact and some of -- you
17 know, some of the other topics, but, again, we've told the
18 Court and the Court has, you know, mentioned a few times that
19 maybe that could be something that will be taken up later.

20 THE COURT: Well, I'm not sure I'm clear on -- I
21 thought I heard the defendant say he only had testimony
22 relevant to the TVT Secur. Then I hear you say no, he has
23 information on all of the products. So which is it?

24 MR. BROWN: Your Honor, this is Michael Brown. He
25 was -- Dr. Robinson was -- got there in September, October of

1 2005. So he would've not have been the Medical Affairs
2 Director at the time that TVT Classic was launched or at the
3 time that TVT Obturator would have been launched.

4 When he got there in the latter part of 2005, he would've
5 been involved with the launch of the TVT Secur device. And
6 then as Mr. Cartmell stated, when he left in 2009, he would
7 have been involved in some of the sustainment of TVT Obturator
8 and TVT Retropubic. By the time that the TVT Abbrevio and
9 TVT Exact were launched, he was no longer involved with the
10 products of TVT and Abbrevio. That would've been a Dr. Hinoul
11 and a Dr. Kirkemo.

12 And so, Your Honor, our point is that they have had
13 adequate time to be able to go through and spend a day on TVT
14 Secur, which they did, and started, Your Honor, at 9:00 and we
15 stopped it at 6:53 p.m. And then the next day, they go over
16 the sustainment of the TVT Obturator and the TVT Retropubic,
17 Your Honor. And we had offered to start on July 25th, that
18 next day, at 8:00 to give additional time. That offer was
19 denied. We started promptly at 9:00, and we did not start our
20 direct until 4:16 p.m., Your Honor, to ensure that there was
21 the adequate time for the deposition.

22 MR. AYLSTOCK: Your Honor, this is Bryan Aylstock.
23 I apologize for joining late. I just landed back from
24 Pensacola. So I just wanted to let you know I'm here, for the
25 record.

1 THE COURT: Thank you.

2 MR. CARTMELL: Your Honor, this is Tom Cartmell. If
3 I could respond to that.

4 Your Honor, what isn't being stated is it's true that he
5 was not there during the time that TVT Classic was launched,
6 but when he was there during that period of time, he was the
7 medical director responsible for signing off on all TVT
8 Classic risk -- risk assessment tools that were done, and
9 there were several.

10 In fact, in 2005 when he got there, they did an entire
11 revamping of their policies and procedures related to risk
12 tool assessments, risk management reports. And for the
13 products TVT, TVT-A, TVT Laser Cut Mesh, TVT-O, and TVT-S, he
14 was the medical director that signed off on every single one
15 of those.

16 So the fact that he wasn't there when it was launched is
17 true, but once he became the medical director, every time that
18 there was a new risk assessment done or every time that there
19 was a complaint to the company and a medical director needed
20 to sign off on it, regardless of whether it was TVT-O, TVT-S,
21 TVT Classic, TVT Laser Cut, TVT-AA, he was the medical
22 director responsible for signing off on all of those for the
23 company.

24 So he was very well involved or very much so involved in
25 all of those at the critical time period when things were

1 changing with these products.

2 As far as TVT Exact and TVT Abbrevio, he was also
3 intimately involved in the studies that were done in
4 development of those products that were not yet launched. He
5 signed off on studies. He also signed off on studies for TVT
6 Secur, TVT-O, TVT Classic and was critical in the clinical
7 studies that the company was doing during those periods of
8 time.

9 THE COURT: What is it that the New Jersey lawyers
10 intend to cover?

11 MR. CARTMELL: Well --

12 THE COURT: I mean what products are they looking
13 at? Are they looking at all seven products as well?

14 MR. CARTMELL: Well, no, they -- I will tell you
15 this.

16 THE COURT: Who is this?

17 MR. CARTMELL: New Jersey has been -- I'm sorry.
18 Tom Cartmell. New Jersey has been different in their
19 discovery. In other words, Judge Higbee had told them that
20 originally that because the first trial was a Prolift, they
21 just needed to do discovery on that.

22 They've now moved into some TVT discovery, but as of yet
23 New Jersey has never done discovery on multiple TVT products
24 other than, I think, have done a few discovery depositions on
25 TVT-S.

1 My understanding is that they are phasing discovery and
2 that the New Jersey lawyer has said to Judge Higbee and has
3 certainly told Bryan and myself and Renee that he intends to
4 have his voice on all, you know, on his videos that he plays
5 in New Jersey and that they will -- you know, they intend to
6 do discovery at a different pace than us because they simply
7 don't have a trial or expert deadline coming up like we do;
8 and they don't have the resources, they've told us, to be
9 prepared to perform all these depositions at this point.

10 MR. AYLSTOCK: Your Honor, Bryan Aylstock. Just
11 real briefly. I think Adam has also been asking -- New
12 Jersey's counsel, Adam Slater, has been asking Prolift+M
13 questions in some of these depositions, and that's a different
14 product than the Prolift that had been the subject of the
15 New Jersey discovery initially.

16 THE COURT: All right. Just so to make sure --

17 MR. GAGE: Your Honor --

18 THE COURT: Wait. Wait. Before you go on, we had
19 some trouble hearing what Mr. Aylstock was saying. As I
20 understood it, Mr. Aylstock, you said that they're still
21 asking questions about a Prolift product; it's just a
22 different Prolift product than they've asked about in the
23 past.

24 MR. AYLSTOCK: At least from my involvement when
25 I've been in depositions with New Jersey counsel. A lot of

1 the questions seem to be involved in the Prolift+M, which is a
2 different product than the Prolift. It's an entirely
3 different mesh than the Prolift, but I just wanted to add that
4 briefly, if I could.

5 THE COURT: All right.

6 MR. GAGE: And, Your Honor, there's another issue
7 that I want to advise the Court of. Tom Cartmell -- and this
8 is William Gage. Tom Cartmell and I talked yesterday about a
9 number of these issues to see what we could work out. And the
10 proposal with Tom was -- the proposal was on September -- that
11 we would be looking at September 4. But the concern that I
12 did not realize until this morning was that that is a Jewish
13 holiday and that might impact Mr. Slater. But he has not
14 specifically told us that, but he has told us, I think with
15 respect to other depositions, that the Jewish holidays, you
16 know, he would -- he asked that we not set depositions on
17 Jewish holidays.

18 And I just wanted to let Tom know, Your Honor, that I
19 just didn't even know about that until this morning. And I'm
20 not saying that Adam has asked us for that, told us about
21 that, but he has told us he can't be available on September 4.

22 THE COURT: As I'm -- as I'm listening to you, what
23 I am thinking is that the plaintiffs in the MDL are likely
24 going to need one more day to depose Dr. Robinson. If he has,
25 in fact, had as much involvement in these products, whether it

1 was at the time they launched or later, it sounds like he has
2 had quite a bit of involvement and he would be an important
3 witness. So I believe they're going to need another day to
4 get the information that they need.

5 Now, you know, the problem I have is I really don't have
6 any control over the New Jersey litigation, how or when they
7 do their discovery or what the judge in New Jersey is going to
8 do if the MDL has done a bunch of discovery and the New Jersey
9 lawyers don't want to accept that.

10 So I don't really know how to help Ethicon except to say
11 it sounds to me as though there is good cause for the
12 plaintiffs to have an additional day to depose Dr. Robinson.

13 MR. BROWN: And, Your Honor, this is Michael Brown.
14 The other concern with Dr. Robinson that we had and I didn't
15 get to note earlier is Dr. Robinson is a former employee at
16 this time who is retired and so is not still currently an
17 employee. So I just wanted to let Your Honor know that as
18 well.

19 MR. GAGE: Your Honor, the only remaining issue on
20 Dr. Robinson now concerns the date; and as I said earlier,
21 Dr. Robinson has -- he's got September 11 available, which
22 would then accommodate Mr. Slater because I think that's not a
23 Jewish holiday, as I understand it, but the 4th is. And so --
24 but I know -- but the 4th, the MDL lawyers don't want it.

25 So it's just been a real problem. And so if we've got to

1 give them another day, we'd sure like to do it on the 11th so
2 that at least Mr. Slater can be present and we don't get in
3 trouble up in New Jersey for not putting him up on a date when
4 he can at least be present.

5 THE COURT: Well, that makes sense. Are the
6 plaintiffs, Mr. Aylstock or Cartmell, are you available on
7 September 11th? They could schedule Dr. Robinson.

8 I'm going to grant your request for an additional day.
9 It sounds to me as though you're going to need one additional
10 day. I don't know how that's going to affect you, Ethicon,
11 though, as far as New Jersey goes, but I don't know that
12 there's anything I can do about that, especially if they want
13 to come in and ask questions about Prolift, which doesn't have
14 anything to do with the first few rounds of our MDL trials.

15 MR. GAGE: Well, Your Honor, it would -- it would be
16 helpful if the depo in the MDL goes forward on the 11th
17 because, like I said, at least it would let us do our best to
18 accommodate plaintiffs' counsel's religious -- again --

19 THE COURT: Right.

20 MR. GAGE: -- he hasn't told us, but we now believe
21 it's his religious holiday, and it would be -- it's putting us
22 in a very difficult position to openly not honor what I
23 believe would be his request that it not be scheduled on a
24 major holiday for the state.

25 THE COURT: Well, I think that might have to be the

1 trade-off, Mr. Cartmell. You can have another day, but you'll
2 have to do it on the 11th. And I don't know what you're
3 going to do. Mr. Slater is in the New Jersey litigation; is
4 that correct?

5 MR. CARTMELL: That's correct, Your Honor. This is
6 Tom Cartmell. I did not know this, but last night when we
7 talked, Mr. Gage had said, you know, "Would you just take the
8 4th?" And actually I had said yes, we would take the 4th. I
9 didn't know anything about that. And he had said, "We'll just
10 go forward on the 4th. I don't even know if Adam Slater is
11 going to attend, but would you do that?" And I said yes.

12 The problem with the 11th is that they've offered three
13 other depositions that I think -- or two at least -- Axel
14 Arnaud's deposition that week, who is another one of the top
15 four most critical.

16 And, William, who's -- there's another one at least that
17 week that we've accepted, and we've told them, you know, we
18 are hopeful that because the same people are taking, you know,
19 the top four critical depositions, we were hopeful that we
20 could spread it out and not have them day after day during the
21 same week.

22 THE COURT: Well, you may not have that -- you may
23 not have that luxury.

24 MR. CARTMELL: Okay.

25 THE COURT: There's a lot of lawyers working on

1 these cases, and I know that every lawyer thinks they're the
2 best lawyer and they can do it the best and they want to do
3 it, but that may not always be possible.

4 So what I'm saying today is you can have one more day for
5 the MDL, but you'll need to do it on September 11th to give
6 Ethicon some argument that Mr. Slater could have been present
7 and perhaps could have asked questions if he was there should
8 that issue come up in New Jersey because --

9 MR. CARTMELL: Okay.

10 THE COURT: Okay.

11 MR. CARTMELL: Thank you. Thanks, Judge.

12 THE COURT: Now, the second one would be -- let's
13 see -- oh, Mr. Hinoul?

14 MR. GAGE: Judge, it's actually pronounced
15 "Ha-newal."

16 THE COURT: Hinoul.

17 MR. GAGE: Yeah. He's Dr. Pete Hinoul. And this is
18 William Gage, Judge. I will yield the floor to Mr. Brown, I
19 suppose, to tell us kind of more specifically what the issue
20 is there.

21 I think, Judge, the issue is we've offered two days next
22 week for his deposition, and the MDL plaintiffs have asked
23 that the deposition be held after a 30(b)(6) deponent
24 concerning consulting agreements. And so the deal is
25 Dr. Hinoul is probably one of our -- he is -- is he still a

1 medical director?

2 MR. BROWN: Yes.

3 MR. GAGE: He's still a medical director at Ethicon.
4 He, Judge, is -- he's kind of like one of our chief people at
5 the company, and he was the chief person at the time of some
6 of these events, and he is one of the ones that we just have a
7 really difficult time with in terms of scheduling because he's
8 frequently traveling around the country for work, and
9 sometimes internationally.

10 And so on Dr. Hinoul, the plaintiffs wanted two
11 additional days for his depo, and so we offered those two
12 additional days -- how long ago? -- a week or two or three
13 ago? Maybe two or so weeks ago.

14 And the problem now is -- and we got that depo set and
15 we're ready to go and Dr. Hinoul is set and ready to go. The
16 problem now is that the plaintiffs have served a 30(b)(6)
17 notice on an issue related to consulting agreements and they
18 would like for us to put the 30(b)(6) consulting deponent up
19 for deposition first before Dr. Hinoul's deposition goes next
20 week.

21 And since we can't get the 30(b)(6) deponent -- her name
22 is Laura Angelini. We can't put her up until, I think --
23 what, September 13? -- September 16. Since we can't put her
24 up until September 16, we're just in a total logjam.

25 THE COURT: All right.

1 MR. GAGE: And so what we're asking for is relief on
2 the plaintiffs' request that we stagger the depositions in
3 that order. We would ask that Hinoul's deposition go forward
4 next week as offered so that we can make all this work.

5 THE COURT: Mr. Cartmell?

6 MR. CARTMELL: Your Honor, we -- there's a
7 background that needs to be told about this a little bit.
8 Where Angelini -- her deposition was scheduled long ago. We
9 were -- we had accepted the deposition. We were ready to take
10 the deposition. It was offered for two days. Our lawyers
11 were prepared and ready. And we got a call from defense
12 counsel, I think it was four or five days before, saying she's
13 had an emergency come up and she's not going to be able to be
14 deposed at that time. So that deposition was supposed to be
15 completed and it ended up being pushed back.

16 We then asked for, you know, immediately for dates for
17 Laura Angelini's deposition and literally heard nothing for
18 over a month. And in the meantime, what happened was we had
19 been trying to be -- to get a contract that was in existence
20 between Dr. Ulmsten, the inventor of the TVT Classic product,
21 and MedScand or -- which ultimately became J&J; they purchased
22 MedScand -- for four or five or six months.

23 And there are multiple agreements between Dr. Ulmsten and
24 J&J. And we were produced a couple, and then we said, "Well,
25 wait. Where are the others?" And then we were produced

1 another one. And we said, "Well, this one, we need this one.
2 It's critical for Dr. Arnaud's deposition." The night or day
3 before, actually, the deposition of Dr. Arnaud, that
4 agreement, which we knew was going to be critical, finally
5 showed up after several months of that. We didn't get the
6 actual cover page of that until the night before. We got part
7 of the agreement but not the first page saying who the parties
8 to that were.

9 When we got it, sure enough it was the inventor, the
10 doctor. And in that contract is a milestone provision that
11 states specifically that any clinical studies that were
12 performed by this doctor and provided favorable results -- in
13 other words, efficacy that was at a certain level; I think it
14 was 85 or 90 percent -- and low complication rates that were
15 below what had been published by Dr. Ulmsten before, they
16 would pay Dr. Ulmsten \$400,000 per study that gave them that
17 result, so a payment for favorable results clause in this
18 agreement. We got it the night before. We questioned Dr.
19 Arnaud about it and we said, you know, "How many times did Dr.
20 Ulmsten do clinical studies where he was paid \$400,000 for
21 those?" And Dr. Arnaud said, "I have no idea. Of course, you
22 know, I don't know. He was a great guy. We probably never
23 paid him."

24 So immediately we -- well, not immediately, but within a
25 week or two, I think -- I don't know the exact dates -- we

1 filed a 30(b)(6) saying we need somebody to testify. We've
2 been asking for this information for months. We originally
3 asked it during Dan Smith's deposition because he was the
4 30(b)(6) witness that was put forth to be the witness to talk
5 about consulting agreements with the company. And that was
6 several months ago. And we've been asking for Dan Smith for
7 all the consulting agreements but didn't get them.

8 So we completed that 30(b)(6) without having that
9 information. When we sent out the consulting agreements or
10 payments -- the 30(b)(6) related to these clinical study
11 payments -- we had not heard anything back about dates for
12 Laura Angelini or dates for Pete Hinoul, and we had completed
13 Pete Hinoul's -- the first part of his fact witness
14 deposition.

15 They then named Laura Angelini as the 30(b)(6) witness on
16 that topic. And we said, "Okay. If you're going to make
17 Miss Angelini that witness, we would like a date for her as
18 soon as possible because we need to get this knocked out first
19 before we complete the medical directors because we know from
20 Dr. Arnaud's deposition that if we don't have that completed,
21 the medical directors will just say, 'We don't know how much
22 was made in payments related to clinical studies for the TVT
23 Classic.'"

24 So I asked -- as soon as I got the e-mail from
25 Miss Jacobs saying that they want to put Pete Hinoul up on the

1 28th or 29th, my response was, "We need to do one day. We'll
2 limit the 30(b)(6) deposition of Miss Angelini to one day.
3 We'll make that agreement with you. But we need to do that
4 before Dr. Hinoul's deposition."

5 I never heard anything for several days. I don't
6 remember how long it was at all. And another e-mail came and
7 said, "Are you going to take Pete Hinoul's 28th to 29th date?"
8 And my response immediately to that was, "I told you in a
9 prior e-mail the week before that we need to have the 30(b)(6)
10 before that." So --

11 THE COURT: Now, Mr. Cartmell, before you go on --

12 MR. CARTMELL: Yes. Yes.

13 THE COURT: I'm sorry --

14 MR. CARTMELL: Okay.

15 THE COURT: -- but I have to interrupt here --

16 MR. CARTMELL: That's all right.

17 THE COURT: -- because the one point that I'm
18 missing in all of this is why it is so critically important
19 that you find out how much these people were paid before you
20 take Dr. Hinoul's deposition.

21 MR. CARTMELL: I apologize. I've left that fact
22 out, and I apologize. Pete Hinoul is a 30(b)(6) witness.
23 He's being taken as a 30(b)(6) on clinical studies. And so he
24 is a 30(b)(6) deposition -- that's what I left out -- on
25 clinical studies related to the TVT product.

1 THE COURT: Well, if you're going to get the
2 information about how much was paid from Miss Angelini, why
3 does the amount that was paid make any difference with what
4 you're going to ask Dr. Hinoul?

5 I'm still not understanding why that's such a critical
6 piece of information.

7 MR. CARTMELL: Well, I mean there's multiple
8 clinical studies that obviously -- I mean it's a little bit of
9 strategy obviously, but it's related to which studies, you
10 know, what their results were and were payments made at that
11 time.

12 And what Dr. Hinoul is going to say is, obviously, you
13 know, "I don't know whether or not there was any payment made
14 for this study and this study and this study, multiple
15 Dr. Ulmsten studies." And we wanted the company to speak, the
16 company representative, on behalf of the company about that
17 issue related to clinical studies. And if he doesn't have the
18 information, he won't be able to.

19 THE COURT: Is that one of the areas of inquiry that
20 you included in this 30(b)(6) notice?

21 MR. CARTMELL: It was -- it was clinical studies for
22 the -- he was -- no, we didn't say payments from consultants
23 on clinical studies. We had just said the clinical studies
24 related to the TVT product.

25 THE COURT: But with Miss Angelini you did ask

1 specifically as a topic of inquiry that she's to supply the
2 payments.

3 MR. CARTMELL: Yeah, that's related to the
4 agreement.

5 THE COURT: Well, I don't know. You know, I still
6 don't understand why it's so magical to know if a payment was
7 made and how that would -- why that would have such a large
8 impact on your examination of Dr. Hinoul.

9 I think the problem that you're facing is that they're
10 telling you it's difficult to get him scheduled. They've got
11 dates. He's open and ready for those dates. And you may put
12 yourself in a bind if you continue these again.

13 MR. CARTMELL: Well, here's what we had talked
14 about, Your Honor. This is Tom again. We did talk last
15 night. I wasn't certain that this was even going to be on the
16 list today from defense counsel because I think we visited
17 last night about my understanding was that we were going to go
18 ahead and take Miss Angelini's 30(b)(6) on September 16th, the
19 first day of her fact witness deposition on the 17th, and
20 Miss Jacobs was checking to see if she could do the second day
21 of her fact witness deposition on the 23rd. And then we were
22 going to likely have to take Pete Hinoul's deposition a little
23 late -- in other words, after September 23rd -- and I had
24 asked if they could do it as -- you know, look for dates as
25 soon as possible.

1 Now, I think what they've told me is they said he is
2 going to be in trial. There's a trial, a TVT trial in
3 Missouri starting September 23rd. And I suspect they'll want
4 to do it before then because he's going to be preparing for
5 trial and maybe testify there.

6 I was hoping we could get a date, you know, as soon after
7 that that we could and then maybe if we needed to supplement
8 the expert reports.

9 THE COURT: Well, I don't know what to tell you.
10 You've -- apparently you've been offered these dates of the
11 28th and the 29th. He's prepared to go forward. You've
12 asked for his deposition. These are dates that you are
13 apparently free.

14 MR. CARTMELL: Judge, I apologize for interrupting,
15 but, Your Honor, we have never accepted that date. I have
16 never assigned a team to that deposition for that date because
17 we -- I told her immediately that we wanted the 30(b)(6)
18 first.

19 THE COURT: So is your problem that you wouldn't be
20 ready by the 28th?

21 MR. CARTMELL: Yes, we will not be prepared for the
22 clinical study 30(b)(6) on the 28th and 29th.

23 THE COURT: Well, you know, I can't -- obviously I
24 can't make them take a deposition on two days that they've
25 never noticed the deposition to be taken on. I can't force

1 them to accept the dates. You know, I don't know what to tell
2 you.

3 It sounds to me as though if it's not been noticed, the
4 only problem you're going to run into, Mr. Cartmell, is he may
5 not be available in the future when you want to depose him,
6 but I don't know what else to do on that one.

7 I don't see any magical reason why this Laura Angelini's
8 deposition needs to be taken before Dr. Hinoul's. But what I
9 hear Mr. Cartmell saying, Mr. Gage, is that he's not prepared
10 to take Dr. Hinoul's deposition on the 28th and 29th, he
11 never asked for them on those two dates, and he never agreed
12 to those two dates. And it's not been noticed, right?

13 MR. GAGE: That's correct, Your Honor. I mean, you
14 know, if you think about the process, the plaintiffs say, "We
15 need the deposition of Pete Hinoul." We then offered
16 August 22, we offered August 23, we offered August 29, and we
17 offered August 30.

18 So, you know, in terms of the way that things work, we've
19 done -- you know, we've done what is expected of us, and
20 that's to provide a good number of dates when they ask for the
21 deponent's deposition.

22 The place that we're headed toward now, or potentially,
23 is going to be a situation where if Pete doesn't get deposed
24 next week, then the plaintiffs next week will be making
25 demands on us to produce him, you know, after September 23

1 while he's either in trial or getting ready for trial in this
2 case up in Missouri, and then they're going to ask to
3 supplement their expert reports. I mean I don't know really
4 why they would need to do that, but nonetheless they've made
5 that request. And all of this comes in the context of our
6 saying here are four dates we're ready, willing and available.

7 THE COURT: Well, I understand that.

8 MR. GAGE: So I mean --

9 THE COURT: No, I understand that, and I agree with
10 you.

11 They're telling you right now, Mr. Cartmell, that he is
12 not going to be available when that trial starts in Missouri,
13 which is a very understandable reason for him to be
14 unavailable. They have dates available now that you can take
15 the man.

16 I haven't heard any argument from you that convinces me
17 that there needs to be a delay in his deposition. And I'm
18 certain that if it -- if you don't take these dates and he's
19 not available and you try to use that to extend an expert's
20 supplementation, that Judge Goodwin isn't going to let you do
21 that because I'm going to tell Judge Goodwin that you had an
22 opportunity to take his deposition in sufficient time for your
23 expert reports.

24 So I don't know what you want to do.

25 MR. CARTMELL: Well --

1 THE COURT: I certainly can't make you take it on
2 those dates, but today --

3 MR. CARTMELL: I guess --

4 THE COURT: Today is the 23th. That gives you quite
5 a bit of day -- quite a bit of time to get prepared for his
6 deposition.

7 MR. CARTMELL: Okay. I mean I will -- if I can -- I
8 need to talk about -- talk to the people that were going to
9 assist in this deposition.

10 I just -- Your Honor, I apologize that we didn't accept
11 the date, but we never heard anything back for weeks. I never
12 considered that this deposition would be on the 28th and
13 29th because we were looking -- the first time I heard about
14 him being in trial was last night.

15 I considered -- our team considered that in a month and a
16 half, they would be able to come up with one date in September
17 or two dates in September. I just -- I didn't think that was
18 unreasonable based on the process we had been going through.
19 And, you know, we've never really -- there's been multiple
20 times when we have said, "We need this deposition before this
21 one," because there is some strategy involved in taking these
22 depositions, especially when you're dealing with six different
23 products and different, you know, things like this.

24 So we've never complained, though, because we've said,
25 "Let's work it out." This was one, because of the experience

1 we've gone through time and time again at these depositions
2 when they say, "I don't know" and we're sort of chasing our
3 tail, that we thought, look, we need to nail this issue down,
4 get it from the company so they can tell us; surely they're
5 going to be able to give us a day or two in September.

6 Now, the day before, last night, was the first time I had
7 heard them ever say, "Look, we thought we were going forward
8 on the 28th and 29th." In the meantime, I've got people
9 working to prepare for, you know, a dozen other depositions
10 that are already scheduled during that time period.

11 THE COURT: But I'm afraid that's going to be the
12 nature of it. I understand that there's strategy involved,
13 but you don't always get to set them up the way you want to,
14 because sometimes you're just driven by the availability of
15 the witness.

16 So, you know, what I'm telling you is I'm not saying that
17 you can't take the deposition some day in September. Maybe
18 there are some days prior to the 20th when Dr. Hinoul could
19 be available. But what I'm telling you is, if you wait until
20 after he's involved in the trial in Missouri, then I'm not --
21 I'm not going to recommend to Dr. Goodwin -- or to Judge
22 Goodwin that that would be a valid basis for having any
23 extensions or supplementations of expert reports. I don't
24 think that would be a sufficient basis, because you have an
25 opportunity here to depose him.

1 MR. CARTMELL: Yeah, they told me last night there's
2 not another -- there's not a single day in September that he
3 can be produced.

4 THE COURT: Well, you know, I would ask Mr. Gage to
5 check on that and make sure that's truly the case. But, you
6 know, I don't otherwise know what else to tell you.

7 There's a lot of people to depose. You're going to have
8 to take some of these out of the order that you most prefer to
9 take them.

10 MR. CARTMELL: I understand, Your Honor. I
11 appreciate that. I will tell you there have been at least a
12 dozen times we have tried to give priority to them. We have
13 never once been given the priority. It has never been the
14 case that when we have asked for priority, we have been given
15 the priority that we wanted to take them in; never.

16 THE COURT: Well, maybe you should -- maybe you need
17 to start noticing them on dates that you want to notice them
18 on, because, you know, I really don't know what to do when
19 what you're talking about is there's no agreement, there's no
20 notice, there's nothing for me to enforce, there's nothing for
21 me to really do except to say to you all you're not going to
22 get everything you want in scheduling these depositions.

23 MR. GAGE: Your Honor, if I might.

24 MR. AYLSTOCK: This is Bryan Aylstock. I'm sorry,
25 Judge, to interrupt. You know, it's a little curious to me

1 it -- Pete Hinoul versus the medical affairs director at
2 clinical affairs, in the Prolift in the New Jersey litigation,
3 the deponent, the 30(b)(6) witness for the clinical studies
4 was Judi Gauld, and it was my understanding she was going to
5 be a clinical designee here as well.

6 So, you know, perhaps one way out of this is, you know,
7 to help them designate who they want, and obviously Judi Gauld
8 as the clinical affairs director is an appropriate designee
9 and she was able to do it in the Prolift and she was involved
10 in all those trials. So that's a potential way out that I
11 just want to throw out.

12 MS. BAGGETT: Your Honor -- and this is Renee
13 Baggett. I just wanted to interrupt also. One of the
14 concerns with doing the depositions out of order that may not
15 be as obvious as we wanted to make it, but the fact that a lot
16 of times in these depositions and during the preparation for
17 these depositions, we discover documents and testimony that
18 was not provided prior to the deposition and it could put us
19 in a position that we have to ask again to have Dr. Hinoul
20 come back as a result of the information that we learn during
21 the deposition of the 30(b)(6), Miss Angelini.

22 THE COURT: Well, I do understand what you're saying
23 and I'm not unsympathetic to your position, but what I am
24 saying to you is that as far as the authority that I have,
25 there's really not a lot that I can do in these kinds of

1 situations except to say if there are dates available and
2 you've been given a series of dates, then, you know, you need
3 to -- you need to get them scheduled and pick those dates
4 because there is a chance down the road you're not going to
5 get more dates when you want them.

6 But, you know, the other option for you as plaintiffs is
7 to quit -- quit waiting, quit asking them to give you dates;
8 just go ahead and notice things. I don't -- it just depends
9 on how much you want to work together, I suppose.

10 MR. CARTMELL: Well, that's the issue, Your Honor.
11 Tom Cartmell. You know, we -- both sides have bent over
12 backwards to work with each other. You know, we've decided --
13 we've made informed decisions that rather than file motions
14 and do that kind of stuff, it pays to work together. And, you
15 know, what? It's biting us in the you-know-what now.

16 And maybe we shouldn't have, but I can understand the
17 idea that, you know, they're giving us dates, but there's
18 never been a time when they have given us dates when we wanted
19 to do the deposition and we could've accepted them.

20 And, you know, what we would ask for, if we had filed
21 motions, is to order them to give us dates for somebody like
22 this so important and not say, "We have the entire month of
23 September and we cannot give you one day. We cannot give you
24 two days."

25 MR. GAGE: Your Honor --

1 THE COURT: Yes.

2 MR. GAGE: Your Honor, this is Mr. William Gage. If
3 I could just lend just a tad bit of perspective. You know, I
4 think we're probably close to 35, maybe 40 depositions in this
5 litigation. And I join Mr. Cartmell's statement where he said
6 we've bent over backwards to work with each other. We have.
7 This is -- I think, if I'm correct, this is the first time
8 we've had to ask the Court for any assistance on scheduling
9 issues. And so I think, you know, this is like less than
10 maybe 10 or 5 percent of the overall number of depositions. It's
11 gotten to the point where we've had to ask Your Honor for
12 input.

13 So I do believe that the parties have been working very
14 well together. We're both under a tremendous amount of
15 pressure. So I just wanted Your Honor and also plaintiffs'
16 counsel to understand I think it's not as big of an issue in
17 terms of overall numbers as you might -- as it might be
18 portrayed.

19 THE COURT: No, I think you --

20 MR. GAGE: Oh, and, Your Honor --

21 THE COURT: I do think you've gotten along quite
22 well, but what I'm saying is when you're asking -- when you're
23 asking for my assistance, if there's no paper that's been
24 filed, I mean like a notice of deposition, there's really not
25 much I can do except encourage you to pick dates that you can

1 both be available for.

2 What I'm -- one thing I can tell you, though, is if you
3 haven't taken depositions that you could have taken and just
4 didn't take them because you didn't like the order that they
5 were in, I guarantee you that is not going to be a sufficient
6 basis for Judge Goodwin to extend deadlines. He's not going
7 to find that persuasive. I don't find it persuasive. That's
8 what I'm trying to tell you.

9 As far as whether this occurs on September the 4th or
10 August the 30th, there's really nothing I can do about that.
11 You can either notice it on a date you want to notice it on or
12 you can get a date from the defendants and take it.

13 MR. CARTMELL: Understood. This is Tom Cartmell.

14 MR. GAGE: Your Honor -- Your Honor, this is William
15 Gage. If we may, Your Honor, ask the plaintiffs to let us
16 know by, you know, close of business today or maybe by noon on
17 Saturday as to whether they're going to accept the dates
18 offered for Pete Hinoul next week. That would be helpful to
19 us for travel purposes, planning, etcetera.

20 THE COURT: And those dates are -- what are the
21 dates? The 29th and 30th?

22 MR. GAGE: Yes, Your Honor.

23 MR. AYLSTOCK: Judge, this is Bryan Aylstock.

24 William, if you could please -- I mean we will work on a
25 Saturday or a Sunday, and both, and a Jewish holiday for the

1 MDL. It doesn't matter. We need to get this done, but we
2 simply will not be ready with the volume of material by next
3 week. So I would ask that some date be provided in September,
4 and we will make it happen, other than next week. It's just
5 too close in time, so --

6 MR. CARTMELL: This is Mr. Cartmell. This is Tom
7 Cartmell. And we'll pick one of the days, you know, if you
8 can do that. We don't have to necessarily finish it.

9 MR. GAGE: And, Your Honor, if I may ask, I assume
10 this will be a date that you will insist be before Laura
11 Angelini's deposition.

12 THE COURT: No, I don't care if it -- I'm not going
13 to insist when they take it. All I said was --

14 MR. GAGE: Okay.

15 THE COURT: -- I didn't see any magic in taking her
16 deposition before his, because I don't really know why it
17 matters how much somebody was paid to perform a particular
18 study or not, but then I'm not a lawyer in the case. Maybe
19 that's a really important fact, but I'm not going to say what
20 order it has to be taken in. I'm just saying you need to --
21 they either need to notice it on dates that they want to
22 notice it on and your witness will have to be there, unless
23 there's a very good reason for him not to be, or they need to
24 work with you and take dates you can offer.

25 I do find it hard to believe there's not a single day in

1 the month of September that this man who is your current
2 employee can be available. I just -- I find that hard to
3 believe.

4 MR. AYLSTOCK: And, Judge, this is Bryan again.
5 Just to clarify your last point, it's not the fact that he was
6 paid for doing the study. It's the fact he was paid if and
7 only if the results were favorable for the TVT. So if the
8 study came out bad for the TVT, he got no payment.

9 And, you know, our experts -- and you just look at
10 anything, that in and of itself is a very bad thing, and we
11 want to establish how many studies that was part of and so
12 forth, but I get your point. I just wanted to clarify that.

13 THE COURT: No, I do understand that that might be
14 important. I just don't know why that's an important
15 precursor to Dr. Hinoul's deposition. But in any event, I'm
16 not going to tell you what order to take them in.

17 I would urge you, Mr. Gage, to try to find a date or two
18 in September when Dr. Hinoul could be available. Otherwise,
19 the options left are accepting the dates you have or the
20 plaintiffs noticing the deposition.

21 MR. GAGE: Thank you, Your Honor. We'll do that.

22 THE COURT: All right. All right. Dan Lamont. We
23 have Dan Lamont. We're running out of time. We're at one
24 hour right now, but we'll try to cover these last two.

25 What are the issues with Dan Lamont and Dan Smith?

1 MR. COMBS: Judge, this is Phil Combs. I'll speak
2 to Dan Lamont and I'll try to keep it very quick. The only
3 issue here is whether the plaintiffs will get one additional
4 day with Mr. Lamont or two additional days. We've offered one
5 additional day; they've demanded two.

6 Mr. Lamont was deposed for two days in the New Jersey
7 litigation. He was deposed on April 4th, 2012 and May 24th,
8 2012. And he was deposed for two days in the MDL litigation,
9 April 3rd, 2013 and April 4th, 2013. He was a corporate
10 representative on various topics for the regulatory affairs
11 notice.

12 Judge, this man has been deposed for four days. The
13 deposition transcripts of his deposition totaled 1,220 pages.
14 The New Jersey lawyers were present for the two days that he
15 was deposed in the MDL, and we've said, "Listen, under the --
16 under PTO 38 and under Federal Rule 30(d)(1), you get one more
17 day with him." And we've offered that they could have that
18 one additional day -- I may not have the exact -- I believe we
19 offered either September 10 or September 11.

20 So that's our position on that. We think that they've
21 had adequate time to depose Mr. Lamont. We do not think they
22 are entitled to two additional days with Mr. Lamont.

23 THE COURT: Mr. Cartmell? Mr. Aylstock?

24 MR. CARTMELL: This is Tom Cartmell, Your Honor. He
25 was deposed for two days on one product. We're trying to

1 complete the deposition of Mr. Lamont 30(b)(6) in one
2 additional day. He will be talking about six -- six or seven
3 products. There's virtually -- there's absolutely, I should
4 say, no way we could finish his deposition on all products if
5 we are not given another full day, seven hours; and we still
6 won't finish it, incidentally, on the 30(b)(6). And then we
7 have agreed that we would take one day of fact deposition
8 testimony from him.

9 You know, I've looked back at the New Jersey litigation
10 and the number of depositions. There were 57 depositions
11 taken in New Jersey on one product, and 26 of those
12 depositions, the deposition lasted two days or longer. There
13 were multiple -- on one product -- multiple times seven, I
14 believe, depositions were three, as many as four, and those
15 were all fact witness depositions. And we're not trying to be
16 unreasonable. We're just trying to make sure, on behalf of
17 thousands of cases, women across America and lawyers
18 everywhere who expect us to be their fiduciary and prepare a
19 trial package for them, that we've done our duty.

20 We're also trying to make sure that we can finish these.
21 We're fielding calls from lawyers all over America who are
22 saying, "Do you have these handled or do we need to be there
23 or file" -- and some of them are in state courts -- and
24 saying, you know, "Are we going to ask questions as well? Do
25 we need to?"

1 Frankly, we've been telling these people, other than Adam
2 Slater in New Jersey -- because he insists otherwise -- that
3 we have it, you know, handled so that they don't necessarily
4 need to extend these depositions unnecessarily. So we can
5 complete these depositions not, you know, in a lot of respects
6 for all products adequately, but we're trying to be
7 reasonable. We don't think we're being unreasonable.

8 We've only had 35 depositions right now. In, you know,
9 Vioxx and Avandia, it was 60 to 70 depositions. In heart --
10 in others, it's been, you know, hundreds of depositions. And
11 we're doing it in six months on seven or eight products, and
12 we just need the time to make sure we do an adequate job.

13 MR. COMBS: And, Judge, just very briefly. I mean
14 let's not lose sight of the fact the guy has already given
15 1,220 pages of deposition transcript.

16 I -- you know, the fact that depositions took multi days
17 in New Jersey I don't think has any bearing on this. He's
18 been deposed for two days in New Jersey, two days in the MDL.
19 We've offered him for another day at the -- I defended the
20 30(b) deposition that he was at, Chad Hutchinson and I. And
21 at the end of that deposition, what the plaintiffs' counsel
22 said at page 536 of that transcript was, "I'm just ceding my
23 last 30 to 45 minutes here to Mr. Hutchinson so he can do his
24 direct."

25 So the plaintiffs have already said on the record that

1 they only had 30 to 45 minutes more for the man's 30(b)
2 deposition. And I just think that five days is enough.

3 THE COURT: Have all the products been covered in
4 the 30(b)(6) deposition?

5 MR. COMBS: Judge, it's a little hard for me to
6 answer. He is -- he is a post-marketing surveillance witness.
7 So the procedures that apply would apply across the board.
8 Like, for example, there wouldn't be a different procedure for
9 TVT, you know, for a certain TVT as opposed to a different
10 TVT.

11 MR. CARTMELL: Your Honor, this is Tom Cartmell.
12 I'll answer that, and the answer is no, they have not all been
13 covered.

14 And to take that statement by counsel that he's turning
15 over 45 minutes and that's all he had is an absolute untruth,
16 because there have been multiple conversations with defense
17 counsel saying, "We need another day." And he knows that.

18 And to say that, you know, one product gets two days and
19 you guys are fine with that, but all of a sudden now you're
20 using it against us in the MDL who's supposed to have their
21 own opportunity to take depositions and we're trying to do
22 seven products, it's just not fair, frankly.

23 THE COURT: All right. Well, here's what I'm going
24 to do on that. I am going to grant the plaintiffs an
25 additional day for the Rule 30(b)(6) deposition, and I'm also

1 going to give them seven hours to take a fact deposition, all
2 right?

3 MR. COMBS: Okay.

4 MS. BAGGETT: Thank you, Your Honor.

5 MR. GAGE: Yes, Your Honor.

6 THE COURT: Dan Smith. Where are we with Dan Smith?

7 MR. CARTMELL: Dan Smith's deposition, Your Honor,
8 was completed two days as a fact witness. Now, this is the
9 deposition that you've been told it was a 30(b)(6) for four
10 days, and he was designated in the 30(b)(6) to cover all
11 issues of design and development, all design history files for
12 each of the eight products, actually, because Laser Cut Mesh
13 and TVT-AA were covered with them.

14 He is the individual who's responsible for finding on
15 behalf of the company a new mesh or material that would
16 replace the TVT mesh for safety reasons. He was the inventor,
17 developer, designer of the TVT-S, the TVT-O. TVT Scion,
18 TVT-PA were both in development. TVT Abbrevio and Exact he
19 worked extensively on. TVT Classic he was in charge of from a
20 research and development and engineering standpoint, and the
21 Laser Cut Mesh, signing off on all risk management tools.

22 He is, even ahead of David Robinson, the most important
23 witness in the TVT cases there is. He was their designee for
24 30 topics in the 30(b)(6) deposition. That deposition we
25 agreed to complete. His fact witness deposition went forward

1 for two days this week. And the total time on the record was
2 10 hours, I believe, and 17 minutes. We were not given a full
3 14 hours. And even if we were given 14 hours, we would not
4 have finished his deposition.

5 He -- we have major, major problems with responses during
6 the deposition, and this is an issue you've said that maybe we
7 should file a motion on. And if you'd rather me not give
8 examples here and file our motion on, we will do that,
9 although I would like to give examples to the Court if they
10 would allow me, if the Court --

11 THE COURT: Well, let me ask you, what --

12 MR. GAGE: Your Honor --

13 THE COURT: -- is it that you want? What are you
14 asking for?

15 MR. CARTMELL: What we would like is an additional
16 day with Dan Smith as a fact witness deposition. We've agreed
17 to try to complete that in one day.

18 MR. GAGE: Your Honor, this is William Gage. I
19 would like -- Tom, you and I may have discussed this briefly
20 yesterday, but, Your Honor, I really haven't had -- because
21 it's so new, this pending request for an additional day of Dan
22 Smith, if I could ask Your Honor's leave, we can take a look
23 at this situation and get with the people that defended his
24 deposition. I can get Mr. Cartmell a response by close of
25 business Monday.

1 THE COURT: That's fine. I think if you can work
2 that out, that's fine. You know, I will tell you that I think
3 two days is a long time for a fact witness deposition.

4 Now, understandably you didn't get two full days. You
5 apparently got a day and a half, but --

6 MR. CARTMELL: Yeah. They insisted -- counsel
7 insisted -- this is Tom Cartmell. Counsel insisted at 3:30
8 that they start their direct. They performed a two-hour
9 direct, and then we did a 45-minute, I think, 50-minute
10 recross. That's a whole nother issue that maybe next week we
11 can talk to you about because it is creating really major
12 issues I think.

13 The other issue we'd like to talk about is the potential
14 to have somebody at these depositions, a special master, to at
15 least see the responsiveness of these witnesses, but I
16 understand we're running out of time. And if you want to talk
17 about that next week, then we can push it to then.

18 THE COURT: Why don't we have you two try to work
19 something out with Dan Smith. I do think that, you know, a
20 three-hour examination of your own fact witness is a little
21 unusual, so --

22 MR. CARTMELL: It was two hours. I apologize if I
23 said three. It was two.

24 THE COURT: Okay.

25 MR. CARTMELL: This is Tom Cartmell.

1 THE COURT: In any event, you know, most of the time
2 you don't ask very many questions of your fact witnesses. So
3 I could see where that might be a legitimate reason for having
4 a little bit longer with Mr. Smith. But why don't you try to
5 work it out.

6 MR. GAGE: We will, Your Honor. Hopefully we can
7 get something done.

8 THE COURT: All right. Well, I think that's about
9 all we're going to be able to accomplish today. So I guess at
10 least we got that done.

11 MR. GAGE: It's been very helpful and we appreciate
12 your spending your Friday afternoons with us.

13 THE COURT: Well, I'm beginning to look forward to
14 these little meetings. I like to be -- I really like to be
15 the one in charge. In any event, I do appreciate it, and you
16 guys try to get what you can done before our next -- I guess
17 the biggest point maybe by next Friday will be you're going to
18 work on Dr. Klosterhalfen. And also if there's any additional
19 fall-out with Dr. Hinoul, we can talk about that then as well
20 and whatever else comes to mind.

21 MR. CARTMELL: Sounds good. Thank you.

22 MR. GAGE: Thank you, Judge.

23 THE COURT: All right. Enjoy your weekend.
24 Bye-bye.

25 (Telephonic conference concluded at 4:11 p.m.)

1 I, Teresa M. Ruffner, certify that the foregoing is a
2 correct transcript from the record of proceedings in the
3 above-entitled matter.

4
5 /s/Teresa M. Ruffner

August 26, 2013
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